

Message Text

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DRAFTED BY L:VICTOR VILAPLANA
APPROVED BY L:HERBERT J. HANSELL
NEA/IRN - C W NAAS
S/S SGOLDSMITH
-----006405 251616Z /64
O 251538Z JAN 78
FM SECSTATE WASHDC
TO AMEMBASSY TEHRAN IMMEDIATE

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EXDIS FOR AMB. SULLIVAN FROM HERBERT HANSELL, LEGAL ADVISER

E.O. 11652: N/A

TAGS: AINF

SUBJECT: PRIVACY ACT LITIGATION - HASSAR AFSHAR

1. CHRIS HAS ASKED ME TO REVIEW THIS MATTER AND REPLY TO
YOUR CABLE OF JANUARY 12.

2. WE ARE SENSITIVE TO YOUR CONCERNS ABOUT THE INCREASING
BURDEN THIS LITIGATION IS IMPOSING ON THE EMBASSY, AND WE
WILL DO WHATEVER POSSIBLE TO REDUCE THAT BURDEN. WE HAVE
CONSULTED WITH U.S. ATTORNEY AND HAVE CONCLUDED THAT
CERTAIN OF THE QUESTIONS ARE INDEED OBJECTIONABLE.

3. QUESTIONS 10, 1E(1), 2B, 2F(1), 4A, 4B, 5C, 5D, 6A,
6D AND 7 WILL BE OBJECTED TO ON THE GROUND THAT THEY CALL
FOR THE NAMES OF EMBASSY EMPLOYEES INVOLVED IN PROCESSING
THE FOI REQUEST. WE HAVE OBJECTED TO SIMILAR QUESTIONS
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IN THE PREVIOUS TWO SETS OF INTERROGATORIES. THE COURT
HAS UNDER CONSIDERATION AFSHAR'S MOTION TO COMPEL THE
DEPARTMENT TO PROVIDE SURNAMES AND A RULING IS EXPECTED
SHORTLY.

4. QUESTIONS 1G, 1I, 2G AND 2H WILL BE OBJECTED TO ON
THE GROUND THAT THEY CALL FOR PRIVILEGED COMMUNICATIONS.

5. QUESTION 3 MAY BE OBJECTED TO, BUT, IN ANY EVENT, CAN BE ANSWERED BY UASHINGTON AND NEED NOT CONCERN THE EMBASSY AT THIS TIME.

6. REMAINING QUESTIONS DEAL WITH THE BELATED DISCOVERY BY THE EMBASSY OF RECORDS COVERED BY AFSHAR'S REQUEST. THE THRUST OF AFSHAR'S CLAIM AGAINST THE DEPARTMENT IS THAT IT HAS CONCEALED AND WITHHELD RECORDS TO WHICH HE IS ENTITLED, AND A COURT IS VERY LIKELY TO RULE THAT QUESTIONS DIRECTED AT WHETHER THE DISCOVERY WAS INADVERTENTLY BELATED ARE RELEVANT TO THAT CLAIM. IN ADDITION, QUESTIONS NEED NOT CALL FOR RELEVANT INFORMATION, BUT MERELY FOR INFORMATION CALCULATED TO LEAD TO RELEVANT INFORMATION. UNFORTUNATELY, FEDERAL DISCOVERY IS NOTORIOUSLY BROAD.

7. AFHAR WOULD, OF COURSE, PREFER TO TAKE DEPOSITIONS AND THERE IS REAL DANGER THAT IF WE OBJECT WHOLESAL TO THE INTERROGATORIES, THE COURT WILL ALLOW AFSHAR TO TAKE DEPOSITIONS OF EMBASSY AND STATE STAFF. WE STRONGLY BELIEVE INTERROGATORIES ARE PREFERABLE TO DEPOSITIONS. THE COURT, AFTER TWO INITIAL DEPOSITIONS AND AT THE U.S. ATTORNEY'S REQUEST, BARRED FURTHER DEPOSITIONS BUT ORDERED DISCOVERY TO PROCEED THROUGH INTERROGATORIES. ACCORDINGLY, WE WANT TO PROCEED WITH CARE IN OBJECTING LIMITED OFFICIAL USE

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TO INTERROGATORIES.

8. U.S. ATTORNEY HOPES TO MOVE FOR SUMMARY JUDGMENT FOR THE DEPARTMENT AFTER ANSWERS TO THESE INTERROGATORIES ARE FILED WITH THE COURT.

9. WE BELIEVE SEVERAL OUTSTANDING ISSUES IN THIS MATTER

COULD BEST BE RESOLVED BY TELEPHONE. WE PLAN TO CALL YOU ON THURSDAY MORNING, D.C. TIME, JANUARY 26 TO DISCUSS THIS FURTHER. VANCE

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